

REMARKS

In the Official Action mailed 20 December 2005, the Terminal Disclaimer to Patent 6,840,980 was accepted and recorded. Claims 1-14, 24, 26 and 39 were rejected pursuant to 35 U.S.C. §102(e); and claims 15-23, 25, 36, 38, 53-61 and 63 were rejected pursuant to 35 U.S.C. §103(a). Claims 66-75 were allowed.

On the Summary Sheet of the Action, claims 63 and 64 are indicated as being objected to. However, in the body of the Action, "claims 65 and 65" were indicated as being objected to. Since claim 63 has been rejected in a portion of the Action, it is believed that the Examiner intended to object to claims 64 and 65. Nonetheless, pursuant to 35 U.S.C. §102, claim 64 is considered to recite allowable subject matter. In the Office Action, it was indicated that the claims which are objected to would be allowable if rewritten in independent form to include the limitations of the base claim and any intervening claims. Applicants respectfully request that it be confirmed that claim 64 was objected to and claim 63 rejected.

Applicants have amended claim 26 to add the word "and" as shown above. Claims 1-75 remain pending.

Applicants present the COMBINED DECLARATION OF CHRISTOPH MENZEL, SUNIL PURIA, R. SCOTT RADER AND VINCENT PLUVINAGE (hereinafter, the "Combined Declaration") under 37 C.F.R. 1.131, and the DECLARATION of Ephram Cohen, dating certain exhibits to the Combined Declaration.

Rejection of Claims 1, 6, 7, 26 and 39 pursuant to 35 U.S.C. §102(e)

Claims 1, 6, 7, 26 and 39 were rejected as allegedly being anticipated by Hou, United States Patent Number 6,522,988. While applicants believe that the pending claims define inventions neither taught nor suggested by Hou, the rejection of such claims becomes moot in light of the attached Combined Declaration, signed by all inventors. The attached Combined Declaration demonstrates conception of the claimed invention before 24 January 2000, the effective date of Hou, followed by diligence in constructively reducing the invention to practice. Thus, applicants respectfully submit that Hou does not qualify as prior art pursuant to 35 U.S.C. §102. Therefore, Applicants respectfully submit that the pending claims define inventions neither taught nor suggested by the cited prior art. Based upon the foregoing, Applicants respectfully contend that each of the pending claims define an invention suitable for patent protection.

Traversal of Official Notice

Claims 15-22 and 53-61

In the Office Action, Official Notice was taken that the types of tests claimed in claims 15-22 and 53-61 are old and well-known types of hearing tests. However, it is the implementation of these hearing tests in combination with a computer program as claimed that is the claimed invention. Considering the admission that the principle reference, Hou, does not teach these features, Applicants respectfully traverse the Official Notice and request that documentary evidence be proffered showing the implementation of the tests defined by claims 15-22 and 53-61 employing a computer program, as claimed.

Claims 23 and 25 and 61 and 63

In the Office Action, Official Notice was taken that Internet enabled mobile phones and hand held computing platforms were old and well-known. However, it is the implementation of hearing tests in combination with mobile phones and hand held computing devices that is the claimed invention. Considering the admission that the principle reference, Hou, does not teach these features, Applicants respectfully traverse the Official Notice and request that documentary evidence be proffered showing the use of mobile phones and hand held computing devices to implement hearing tests defined by claims 23 and 25 and 61 and 63, as claimed.

Dependent Claims

Considering that the dependent claims incorporate all of the features of the independent claims from which they depend, the dependent claims define inventions suitable for patent protection to the extent that the inventions defined by the independent claims are patentable. Therefore, based upon the foregoing, Applicants respectfully contend that the dependent claims define inventions that are neither anticipated nor obvious in view of the cited prior art.

CONCLUSION

It is respectfully submitted that this application is now in condition for allowance, and such action is requested. The fees under 1.17(a)(3) are submitted herewith.

The Commissioner is hereby authorized to charge any fee determined to be due in connection with this communication, or credit any overpayment, to our Deposit Account No. 50-0869 (RXSD 1003-1).

Respectfully submitted,

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